PARLIAMENTARY SOVEREIGNTY, TREATY PRINCIPLES, AND LOCAL DEMOCRATIC ACCOUNTABILITY

Evidence from Official Information Responses

Mapped against Attorney-General Chris Bishop's 6 August 2026 statement on parliamentary sovereignty

Independent research • August 2026 • Public interest record

1. Executive Summary

- On 6 August 2026 the Attorney-General, Hon Chris Bishop, publicly re-asserted the orthodox constitutional position that Parliament is New Zealand's supreme law-making body. Significant public-policy choices belong to the elected legislature, not to unelected actors.
- Bishop expressly diagnosed the mechanism by which this principle has been eroded: when Parliament inserts open-ended language (notably "the principles of the Treaty of Waitangi") into statute, it "gives the opportunity" for creative interpretation by courts and others. He quoted Cooke P in the Lands case to that effect.
- Parallel official-information work across multiple councils and agencies (2024–2026) shows a consistent operational pattern: limited or absent comparative analysis of major infrastructure investment versus managed-retreat / property-acquisition pathways; a structural funding asymmetry that favours post-disaster recovery over prevention; and decision-making arrangements in which the practical weight of Treaty principles and appointed roles is difficult to scrutinise.
- The combination is material. The Attorney-General has stated the constitutional principle and the diagnostic mechanism. The official-information record shows how that mechanism operates on the ground in flood and coastal hazard decision-making.
- This paper places the primary evidence alongside the Attorney-General's own words. It does not argue for or against any particular Treaty settlement or cultural relationship. It argues for clarity of law, democratic accountability, and transparent evaluation of infrastructure options before communities are told that retreat is the realistic path.

2. Background & Constitutional Frame

2.1 The Attorney-General's statement (6 August 2026)

Addressing The Law Association, Attorney-General Chris Bishop set out a deliberate re-statement of parliamentary sovereignty. Core propositions included:

- Parliament is the supreme law-making body because it alone carries a democratic mandate.
- Significant public-policy choices should be made by the elected legislature, not by non-elected judges or other unelected actors.
- Courts do make law, but incrementally. They lack the institutional capacity and democratic legitimacy for radical systemic policy change.
- When the law drifts in an "unhappy direction," Parliament's duty is to legislate clearly and deliberately to correct it.

2.2 The Lands case diagnosis

Bishop quoted Cooke P (as he then was) in the Lands case:

> *"If the judiciary has been able to play a role to some extent creative, that is because the legislature has given the opportunity."*

The Attorney-General's point was direct: open-ended statutory language (in particular undefined "principles of the Treaty") creates the space for interpretive expansion. Clear,

deliberate legislation closes that space. Parliament has recently demonstrated the corrective approach in the climate-tort context (Smith v Fonterra). The same logic applies wherever vague principles language is used to allocate public decision-making weight.

2.3 Relevance to local government and co-governance arrangements

Local government is a creature of statute. Representation arrangements, the weight given to particular interests in decision-making, and the processes by which hazard and adaptation choices are made are all public-policy choices. On the Attorney-General's stated principles, those choices belong ultimately to the elected legislature and, within the statutory framework Parliament has set, to elected local representatives who are accountable to ratepayers.

Where councils or related entities rely on open-ended Treaty-principles language, appointed or unelected roles, or partnership arrangements that are difficult for ordinary ratepayers to scrutinise, the democratic-accountability question Bishop raised becomes live. This paper examines the operational evidence.

3. Evidence from Official Information

Between 2024 and mid-2026 a series of LGOIMA and OIA requests were lodged with councils, regional councils, Te Waihanga (New Zealand Infrastructure Commission), and related agencies. The requests focused on comparative analysis of infrastructure protection versus managed retreat, consultant expenditure on adaptation and hazard work, modelling of ratepayer and revenue impacts, and the transparency of decision processes. The following findings are drawn from formal responses.

3.1 Absence of comparative analysis – the central gap

A recurring and significant finding is the scarcity or absence of rigorous, documented comparison between major infrastructure investment (stopbanks, drainage upgrades, pumping, land raising) and managed-retreat or property-acquisition pathways.

Te Waihanga (New Zealand Infrastructure Commission)

In response to an OIA request seeking analysis comparing infrastructure investment versus managed retreat, and any work on long-term Crown or ratepayer liabilities associated with retreat, Te Waihanga's formal reply identified only publicly available high-level documents and indicated that the specific comparative and liability analysis sought was not held in the form requested. The practical effect is an admission that the national infrastructure body does not hold, or at least did not produce in response, the detailed comparative work that would allow informed choice between protection and retreat at scale.

Auckland Council (LGOIMA 8140019876, 14 August 2026)

After refinements focusing on the eastern beaches and the 2023/24–2024/25 period, Auckland Council stated:

- The Coastal Management department did not undertake expenditure on managed retreat, property acquisition or voluntary buyout planning.
- The department did not prepare any reports, briefings, technical assessments or analysis in 2023/24 or 2024/25 that compared major infrastructure protection options versus managed retreat or property acquisition pathways.
- No consultant-supported Blue-Green Network investigations in the eastern beaches catchments (Howick, Bucklands Beach, Eastern Beach, Half Moon Bay) in those years.

Limited expenditure figures were released for hydrodynamic modelling and the Shoreline Adaptation Plan programme. The comparative analysis itself was absent.

Pattern across other councils

Similar requests to other councils and regional councils produced a consistent picture: high-level strategy documents and hazard maps are readily cited; detailed, costed, publicly available comparisons of large-scale protection works versus retreat or acquisition are scarce or non-existent in the material released. Where engineering scrutiny packs and older infrastructure reports have been examined (South Dunedin, Tauranga, Hawke's Bay, Thames-Coromandel, Hamilton, Northland, eastern Auckland bays, Nelson/Tasman), older

detailed engineering assessments frequently appear more specific about asset condition, capacity and maintenance than the more recent high-level adaptation documents that emphasise pathways and retreat options.

3.2 The funding asymmetry – recovery versus prevention

Official and public statements in 2025–2026 confirm a structural imbalance:

- Central government continues to co-fund approximately 60% of eligible recovery costs after major weather events.
- No equivalent co-funding mechanism exists for proactive prevention or large-scale protection works.
- Of approximately $64 billion spent by government on natural hazards since 2010, only around 3% has gone to proactive measures (Local Government New Zealand, August 2026).
- Local Government NZ regional sector chair Deon Swiggs described the asymmetry as “bonkers”: it is cheaper to prevent damage than to pay for it after the fact, yet the funding system is weighted the other way.

The Climate Change Commission’s 2026 Progress Report described adaptation progress as “patchy” and noted that communities and councils are left “in limbo” by the absence of a clear funding decision. The Independent Reference Group (July 2025) recommended moving toward a “beneficiary pays” model and ending ongoing climate-related buy-outs after a transition period. The practical consequence is that local authorities face political and financial pressure to emphasise retreat and risk reduction through property measures while the large-scale infrastructure alternative remains under-analysed and under-funded.

3.3 Transparency and process patterns

Across multiple requests the following process characteristics appear repeatedly:

- Default public messaging during flood events emphasises evacuation and preparedness for retreat, while detailed current condition, maintenance backlog and capacity data for existing flood-protection assets is harder to obtain.
- Hazard mapping and Shoreline Adaptation / similar plans proceed, sometimes with significant implications for property, while comparative infrastructure options receive less visible analytical weight.
- Requests for consultant expenditure, decision criteria, and modelling of ratepayer or revenue impacts from large-scale acquisition frequently meet refinement demands, extensions, or refusals under substantial-collation grounds.
- In some locations residents report first learning that their properties sit inside proposed acquisition or high-risk zones through public meetings rather than early, individualised notice.

These are process observations drawn from formal responses and contemporaneous public reporting. They do not require an inference of bad faith. They do demonstrate that the analytical and transparency conditions for genuine choice between protection and retreat are weak.

3.4 Compounding factors – insurance, lending and older housing stock

Parallel official-information and public-source work shows that insurance pricing and bank lending practices on older housing stock and properties with hazard notations are already tightening. Premium rises of 20–30%+ in a short period, reduced quote availability in higher-risk locations, and blunt postcode or hazard-notation approaches to lending create market pressure that reinforces the retreat pathway even where infrastructure options have not been fully evaluated. New Zealand has a high proportion of older housing stock relative to many OECD peers; broad restrictions therefore have systemic housing-market effects. Oversight of these practices has so far been limited.

4. Analysis & Implications

4.1 The Lands-case mechanism in operation

Bishop's diagnosis was that open-ended statutory language creates the opportunity for creative expansion beyond what a democratically accountable legislature has clearly decided. The official-information record shows a parallel operational pattern in the hazard and adaptation domain:

- High-level principles and pathway language are abundant.
- Detailed, costed, publicly contestable comparison of the major infrastructure alternative is scarce.
- Funding rules reward recovery after the event more readily than prevention before it.
- The practical result is that communities are steered toward acceptance of retreat or property-level risk reduction while the protection option remains under-developed in the public analytical record.

Whether or not any individual actor intends this outcome, the structural effect matches the problem the Attorney-General identified: the hard choices are not being forced into the open through clear legislative or analytical requirements, so other processes fill the space.

4.2 Democratic accountability at local level

Local government decisions on flood protection, coastal adaptation and the relative weight of infrastructure versus retreat directly affect property rights, rates, insurance availability and community viability. These are significant public-policy choices. On the principles Bishop articulated, they require clear legislative authorisation and transparent, contestable analysis so that elected representatives and the ratepayers who elect them can see the real options and the real trade-offs.

Where analysis is thin, funding is asymmetric, and decision processes are difficult to scrutinise, accountability is weakened. That is a constitutional and democratic problem regardless of the policy merits of any particular retreat or protection proposal.

4.3 What this paper does not claim

This paper does not claim that climate risk is imaginary, that all infrastructure is feasible, or that retreat is never appropriate. It does not attack Treaty settlements or cultural relationships. It claims only that:

- Parliament's own chief law officer has restated that significant policy choices belong to the elected legislature and that vague language creates interpretive opportunity.
- The official-information record shows that the comparative analytical work needed for genuine choice between large-scale protection and retreat is frequently missing or incomplete.
- The funding system currently favours paying after damage rather than preventing it.
- These gaps have real consequences for ratepayers, property owners and the long-term fiscal position of councils and the Crown.

5. Recommendations

The following steps are practical, sequenced, and consistent with the Attorney-General's call for clearer and more deliberate law and analysis:

1. **Restore comparative analysis as a standard requirement.** Any major adaptation or hazard strategy that contemplates managed retreat or large-scale property acquisition should be required to publish a costed, peer-reviewable comparison with realistic infrastructure-protection alternatives, including whole-of-life costs, residual risk, and ratepayer impacts.
2. **Correct the funding asymmetry.** Central government should establish a clear co-funding pathway for high-value prevention and protection works that is at least as accessible as post-disaster recovery funding. Continuing to fund 60% of recovery while providing no equivalent for prevention is fiscally and logically incoherent.

3. **Improve transparency of decision processes.** Hazard maps, adaptation plans and any proposals that affect property should be accompanied by plain-language statements of the infrastructure options considered, the reasons they were discounted, and the maintenance and capacity status of existing protection assets.
4. **Legislative clarity where needed.** Where open-ended principles language is being used to allocate decision-making weight or to justify pathways that have major property and fiscal consequences, Parliament should consider whether clearer statutory direction is required — consistent with the corrective approach the Attorney-General has endorsed.
5. **Independent engineering baseline work.** Retired and independent engineers with local knowledge remain a high-value resource for restoring detailed asset-condition and capacity baselines that newer high-level documents often omit. Supporting that work strengthens the analytical foundation for whatever pathway is ultimately chosen.

6. Conclusion

The Attorney-General has stated the constitutional principle clearly: Parliament is sovereign; significant policy choices belong to those with a democratic mandate; vague language creates opportunity for expansion beyond what was clearly decided; and when the law drifts, Parliament should correct it deliberately.

The official-information record assembled over the past two years shows that, in the domain of flood and coastal hazard decision-making, the analytical and funding conditions for genuine democratic choice between protection and retreat are weak. Comparative analysis is scarce. Funding favours recovery over prevention. Transparency of the real options is limited.

These are not abstract concerns. They affect property values, insurance, rates, community viability and long-term Crown and council liabilities. Closing the analytical and funding gaps is consistent with the principles the Attorney-General has publicly defended. It is also the minimum required for ratepayers and elected representatives to make informed decisions about the places they live.

7. Principal Sources

Attorney-General Chris Bishop, Address to The Law Association, 6 August 2026 (parliamentary sovereignty, Lands case diagnosis, corrective legislation principle).

Te Waihanga (New Zealand Infrastructure Commission), OIA response OIA26-TW16, analysis of infrastructure investment versus managed retreat.

Auckland Council, LGOIMA response 8140019876, 14 August 2026 (Coastal Adaptation Expenditure).

Climate Change Commission, 2026 Progress Report on the National Adaptation Plan.

Local Government New Zealand statements, August 2026 (funding asymmetry, recovery vs prevention).

Independent Reference Group recommendations to the Ministry for the Environment, July 2025 (beneficiary-pays model, future buy-outs).

Multiple LGOIMA responses and engineering scrutiny packs from South Dunedin / Dunedin City, Tauranga, Hawke’s Bay, Thames-Coromandel, Hamilton, Northland, eastern Auckland, Nelson/Tasman and related agencies (2024–2026).

Radio New Zealand reporting on insurance premium rises, flood-plain consents, managed-retreat policy development and related statements (2024–2026).

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Independent research prepared for the public record and for those working on transparent, accountable hazard and adaptation decision-making.